

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3960 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KEDARNATH @ LOTIYO PATHAN SON OF KANAIYALAL GURJAR

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

#. The Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on April 3, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) detaining the petitioner.

#. The detaining authority took into consideration three offences registered against the detenu under Bombay Prohibition Act. The authority also took into consideration statements of witnesses whose identity is not disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The authority also recorded subjective satisfaction for the need for exercise of these powers in public interest. The authority took into consideration the possibility of resorting to less drastic remedies and, ultimately, came to conclusion that powers of detention under PASA Act are required to be exercised in order to immediately prevent the petitioner from pursuing his anti-social activities which are detrimental to public order.

#. The petitioner/detenu has challenged the order of detention on various counts.

#. Ms. Pahwa, learned advocate appearing for the petitioner submitted that the statements of anonymous witnesses were recorded on 2nd April, 1999, they were verified on 3rd April, 1999 and the order was passed on that very day. She, therefore, submitted that is improper exercise of powers under Section 9(2) of the PASA Act. This would vitiate the detention and the petition may, therefore, be allowed.

#. Mr. Bukhari, learned Assistant Government Pleader appearing for the respondents, has opposed this petition. He has relied on the affidavit in reply and submitted that, as stated by the detaining authority in the affidavit in reply, the orders were passed after due care and caution and on basis of subjective satisfaction arrived at by the authority for the need for exercise of powers under Section 9(2) as well as 3(1) of the PASA Act. He, therefore, submitted that the petition may be dismissed.

#. The only contention that is raised is regarding improper exercise of powers under Section 9(2) of the PASA Act resulting into infringement of right of the detenu of making an effective representation. The powers under Section 9(2) of the PASA Act are to be exercised in public interest. The detaining authority, while exercising these powers, has to examine the correctness and genuineness of the statements made by the witnesses and the fear expressed by them qua the petitioner. The authority has to bear in mind that exercise of powers under Section 9(2) of the PASA Act will have a direct bearing on the right of the detenu of making an effective

representation. Therefore, while exercising these powers, the authority has to take into consideration public interest on one hand and the interest of the detenu on the other hand and, after considering pros and cons has to strike a balance between the two. The authority has to record a subjective satisfaction about the genuineness of the fear expressed by the witnesses. This exercise has to be undertaken with all seriousness and due consideration. This would require some time. In the instant case, the entire exercise is carried out by the detaining authority on 3rd April, 1999. It transpires that the statements were recorded by the sponsoring authority on 2nd April, 1999. The detaining authority, in the affidavit in reply, has not dealt with the question as to when proposal was received, when the file was processed, when the witnesses were called and their statements were verified, when the other material was considered and when the grounds of detention were prepared and order passed. It is difficult to contemplate this entire exercise being carried out at such a pace particularly when it is not explained in affidavit in reply. In this regard, decision in the case of Kalidas Chandubhai Kahar v. State of Gujarat, 1993(2) G.L.R., 1659 may be profitably used. In that case, statements were verified on 16th October, 1992 and the orders were passed on 17th October, 1992. The Division Bench held that there was no sufficient time for the detaining authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act and the petition, therefore, deserves to be allowed.

#. In view of the above discussion, the petition deserves to be allowed and the same is hereby allowed. The order of detention dated 3rd April, 1999, in respect of the petitioner-Kedarnath @ Lotiyo Pathan, is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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